

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**September 29, 2020 at 2:00 p.m.**

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<b>1.</b>	<b><u>20-23901</u>-E-13</b> <b><u>MOH-2</u></b>	<b>WENDY MORGAN</b> <b>Michael Hays</b>	<b>MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR BERKSHIREHATHAWAY HOME SERVICES ELITE REALTY, BROKER(S) O.S.T. 9-15-20 <a href="#">[38]</a></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 15, 2020. By the court's calculation, 14 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

Movant filed a Motion to Shorten Time on September 15, 2020. Dckt. 37. The court granted the Motion and the Motion was set for hearing on September 29, 2020. Dckt. 44.

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Sell Property is <span style="color:red">XXXXX</span>.</b>
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The Bankruptcy Code permits Wendy Kristine Morgan, the Debtor, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 00 Dunstone Drive (Lot 44 APN 028-430-002-000), Oroville, California (“Property”).

Trustee filed a Response stating non-opposition based on the apparent value of the Property and the sales price of \$140,000. Dckt. 47. While it would appear that the Debtor’s exemption would exhaust the equity in the Property, the First Meeting of Creditors has not been completed and the exemptions are not final and locked in at this time.

The Trustee also notes that the proposed Chapter 13 Plan provides for paying the claim secured by the Property through the Plan. However, if the Property is sold, and presumably the claim paid through escrow, the Trustee questions whether the Plan provision will be proper.

### **Debtor’s Supplemental Document**

On September 24, 2020 Debtor submitted a supplemental document updating the court as to the status of the sale. Dckt. 49. Debtor informs the court that the original purchaser has withdrawn their offer. However, there is a new buyer. The proposed purchaser of the property is Jose Manuel Diaz, with the following terms of sale:

- A. The purchase price is \$140,000.00 with a thirty (30) day escrow.
- B. Buyer shall pay \$100,000.00 into escrow and a \$40,000.00 loan to be make by Debtor Seller.
- C. Seller and Buyer shall each pay 50% of the escrow fee and both shall pay for the owner’s title insurance policy.
- D. Seller shall pay the City, County, and any private transfer tax or fee.

Debtor notes that the Trustee may not find the instant offer feasible, and further notes that assuming a claim in the amount of \$93,605.99 is filed, then perhaps the buyer would agree to an extension of the escrow and an increase in the down payment and suggests the matter be continued to after the deadline for filing claims, to October 20, 2020 to consider the filed claims.

The new Purchase Agreement identifies the Seller financing to be a \$40,000 loan, with 7% interest “for 12 yrs.” Revised Sale Information, Purchase Agreement ¶ 3.D.; Dckt. 49. It is not clear if this is a twelve year amortized loan, interest only loan, or a “due only after the plan term ends” loan. If the Debtor’s exemption exhausts the value of the proceeds, such may not matter to creditors (except to the extent that the delayed payment results in projected disposable income from being paid into the Plan).

### **DISCUSSION**

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because ~~XXXXXXXXXXXXXXXXXX~~.

Movant has provided that the broker's commission from the sale of the Property will equal approximately \$10,000.00 with \$5,000.00 to Buyer's broker and \$5,000 to the Seller's broker. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than \$10,000.00.

With a sales price of \$140,000, a \$10,000 broker's commission would be equal to 7%. That is higher than the normal 6% residential real estate commission and higher than commissions for sales of undeveloped property. Again, given the sales price and the Debtor's exemption amount, such may not negatively impact creditors, but just the Debtor in decreasing his exempt proceeds.

At the hearing ~~XXXXXXXXXX~~

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Wendy Kristine Morgan, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED~~ that ~~Wendy Kristine Morgan, the Chapter 13 Debtor,~~  
is authorized to sell pursuant to 11 U.S.C. § 363(b) to ~~Jose Manuel Diaz or~~  
nominee ("Buyer"), the Property commonly known as ~~00 Dunstone Drive,~~  
~~Oroville, California ("Property"), on the following terms:~~

- ~~A. The Property shall be sold to Buyer for \$140,000.00, on the terms and conditions set forth in the Purchase Agreement, Dckt. 49, and as further provided in this Order.~~
- ~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.~~
- ~~D. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
- ~~E. The Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than \$10,000.00. The commission shall be paid to the Chapter 13 Debtor's broker, Berkshire Hathaway.~~
- ~~F. No proceeds of the sale, including any commissions, fees, or~~

~~other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.~~

2.     20-21910-E-13     **TIMOTHY TROCKE**     **MOTION TO CONFIRM PLAN**  
          FF-4             **Gary Fraley**             **8-20-20 [77]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 20, 2020. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Confirm the Amended Plan is <span style="color: red;">XXXXX</span>.</b>
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The debtor, Timothy Tobias Trocke ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$3,216.00 for sixty months and a 100% dividend to unsecured claims totaling \$0.00. Amended Plan, Dckt. 80. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## **CREDITOR'S OPPOSITION**

Roger Anderson ("Creditor") holding a secured claim filed an Opposition on September 3, 2020. Dckt. 86. Creditor opposes confirmation of the Plan on the basis that:

- A. The proposed plan payments are insufficient to pay Secured Creditor's allowed claim in full.
- B. Debtor may not be able to comply with the Plan.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on September 15, 2020. Dckt. 94. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Debtor cannot comply with the plan.
- C. Debtor will not complete plan within the allotted time.

## **DISCUSSION**

### **Insufficient Plan Payments**

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Creditor has filed Proof of Claim No. 2-1 in which the secured claim of \$126,635.02 is asserted, for which Creditor states that there is an 18% interest rate. Proof of Claim 2-1, ¶ 7. The proposed \$2,491.00 monthly payments for the balance of the plan term are insufficient to pay the Class 2 claim in full. Thus, the Plan may not be confirmed.

As the court noted in ruling on an earlier Motion to Confirm filed by Debtor that was denied, this court recently issued a published decision concerning claims secured only by a debtor's residence that are due in full during the term of a plan, and the ability of a debtor to modify the terms of such claim. *In re Collier-Abbott*, 616 B.R. 117 (Bankr. E.D. Cal. 2020). The parties may want to review that decision and the authorities cited therein and not rely on prior discussions of the non-modification of claims secured by a debtor's residence.

In reviewing Creditor's proof of claim, the Note attached to Proof of Claim No. 2-1 contains an extensive Usury provision stating that this loan was made or arranged by an unidentified "Real Estate Broker."

### **Feasibility**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor argues that Debtor does not have sufficient income to fund a feasible plan. Debtor has filed four plans and none have been confirmed because Debtor fails to provide for all of creditor's secured claim. Debtor's budget also fails to allocate for monthly car payments and property

insurance and property taxes expenses. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$4,749.00 delinquent in plan payments, which represents multiple months of the \$3,216.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor failed to provide declarations from significant other and girlfriend's sister addressing the monthly support identified in Schedule I. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Failure to Complete Plan Within Allotted Time**

Debtor is in material default under the Plan because the Plan will complete in more than the allotted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 67 months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

### **Creditor's Request for Dismissal Combined With Opposition to Motion to Confirm**

In their Opposition, Creditor request the court dismiss Debtor's case. Dckt. 86, 6-7. Creditor requests the court dismiss the case pursuant to §1307(c)(1) or §1307(c)(5) as Debtor is unlikely to be able to file a feasible plan that accounts for Creditor's full claim. Creditor argues this is Debtor's fourth plan in five months with the Debtor being unable to confirm one. Creditor being the only creditor in this bankruptcy case, Debtor's failure to confirm a plan is to its detriment.

Alternatively, Creditor asserts that the case may be dismissed pursuant to §109(e) on the grounds that Debtor has failed to provide sufficient proof of income which makes him ineligible to be a debtor under chapter 13 of the bankruptcy code. Arguing that Debtor has had opportunity to but yet has failed to provide proof of the additional monthly support contribution that he is purportedly receiving from his sister, significant other, and from rental income.

Unfortunately, Creditor has not filed a motion to dismiss this case. Federal Rule of Civil Procedure 18, allowing for joining multiple claims for relief in one complaint and incorporated into Federal Rule of Bankruptcy Procedure 7018 are not incorporated into Contested Matter practice by Federal Rule of Bankruptcy Procedure 9014(b).

If Creditor wanted to seek additional relief in this situation, a countermotion would be required. Local Bankruptcy Rule 9014-1(j)(i) provides the procedure for such countermotions.

The court grants no relief pursuant to the additional relief requested in the Opposition by Creditor.

### **Denial of Confirmation**

As discussed above, the Chapter 13 Trustee has identified shortcomings in the current plan. Creditor Roger Anderson emphasizes that the Plan provides for 18% interest on his Class 2 secured claim. This appears to be “bonus interest” which results in such large payments to Mr. Anderson that the Debtor is unable to fund payments for claims of creditors with unsecured claims.

On Schedule A/B Debtor states under penalty of perjury that the Property securing this Creditor’s claim has a value of \$210,000 and he claims a homestead exemption of \$175,000 in it. Dckt. 11 at 3. In Proof of Claim No. 2-1 Creditor states under penalty of perjury that the claim is fully secured, including future accruing interest of 18% per annum for the obligation that “[m]atures on 9/1/2021 during the pendency of this case. Proof of Claim 2-1, § 9.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Timothy Tobias Trocke (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

**IT IS FURTHER ORDERED** any and all other requests for relief stated in the Opposition of Roger Anderson are denied without prejudice.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 17, 2020. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Modified Plan is <span style="color: red;">XXXXX</span>.</b></p>
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The debtor, Candace Jean Ward-Porter (“Debtor”) seeks confirmation of the Modified Plan to catch up with plan payments after falling behind due to an increase in mortgage payments due to property taxes and the mortgage loan being an interest only that was due to increase at month 30. Declaration, Dckt. 42. The Modified Plan provides for:

1. One plan payment of \$2,730.16 for the month of June 2020,
2. \$6,000.00 from the refinance of Debtor’s residence in July 2020 or within three months thereafter,
3. monthly plan payments of \$2,995.00 commencing August 2020 through the end of the plan, and
4. a 7 (seven) percent dividend to unsecured claims totaling \$31,555.00.



Modified Plan, Dckt. 47. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 6, 2020. Dckt. 56. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.

## **DISCUSSION**

### **Delinquency**

Debtor is \$5,999.98 delinquent in plan payments, which represents multiple months of the \$2,995.00 plan payment. Another plan payment will be due the day of the August 25, 2020 hearing. According to Trustee, the Plan calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The proposed July 2020 payment of \$6,000.00 depended on the court granting Debtor’s Motion to Refinance. The court granted Debtor’s Motion on August 11, 2020. Dckt. 59.

At the hearing, the Trustee reported that the Debtor is delinquent for the August 2020 payment. Debtor’s counsel reports that the refinance is set to close on August 27, 2020.

### **September 29, 2020 Hearing**

As of the court’s review of the docket on September 25, 2020, no supplemental documents have been filed.

At the hearing, **xxxxx**

**Final Ruling:** No appearance at the September 29, 2020 hearing is required.

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**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an *Ex Parte* Motion to Dismiss the pending Motion on September 9, 2020, Dckt. 68; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Candace Jean Ward-Porter (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 68, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2020. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Amended Plan is ~~XXXXX~~.**

The debtor, Ignacio Gonzalez Lopez (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$4,130.00 commencing August 2020 through month 60, and a 100 percent dividend for unsecured claims totaling \$21,000.00. Amended Plan, Dckt. 167. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 3, 2020. Dckt. 179. Trustee opposes confirmation of the Plan on the basis that:

- A. Class 1 creditor may have received double payments.
- B. Total amount paid into the Plan is incorrect.

## **DISCUSSION**

### **Class 1 Creditor**

The Non-Standard Provisions of the proposed Plan state in part: “The Payment to US Bank in class 1 shall commence in August, 2020 through month 60 because debtor has made direct payments to

US Bank from filing date through July, 2020.”

According to Trustee, his records show having paid a total of \$28,715.04 in mortgage payments to US Bank Home Mortgage. The Debtor’s Declaration and the non-standard provisions do not specify the months Debtor paid US Bank directly. Thus, it appears that this creditor may have received duplicate payments.

### **Total Amount Paid into the Plan**

Debtor’s Non-Standard provisions states Debtor has paid a total of \$41,370, where Trustee’s records show that Debtor has paid a total of \$43,550.00 into the Plan. Trustee would not object to correcting the total amount in the order confirming plan.

At the hearing, the Trustee concurred with a continuance to allow for the Debtor to propose necessary amendments to the plan in this case.

### **Debtor’s Status Report**

On September 22, 2020, Debtor filed a Status Report informing the court that Trustee and Debtor have reached a solution for the language of the proposed Order confirming the Plan, which is now waiting for the approval of secured creditor’s attorney. Dckt. 190. Debtor expects the proposed order to be filed prior to the continued hearing.

### **September 29, 2020 Hearing**

At the hearing, **xxxxxx**

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 13, 2020. By the court’s calculation, 50 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Amended Plan is ~~XXXXX~~.**

The debtor, Kelly Anne McKellar (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$2,922 for the remaining 56 months of the plan, and a 27 percent dividend to unsecured claims totaling \$48,222. Amended Plan, Dckt. 62. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 17, 2020. Dckt. 65. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor mis-classified a secured creditor’s claim.
- B. Plan may not be feasible.
- C. Debtor is delinquent in plan payments.

## **DISCUSSION**

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$60.00 delinquent in plan payments, which

represents a fraction of the \$2,922.00 plan payment. According to the Trustee, the Debtor has paid \$7,550 into the Plan to date. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Misclassification of a claim**

Debtor's plan classifies the claim of Specialized Loan Servicing as a class 4 claim. Trustee argues that this claims should be listed in Class 1, as creditor's Proof of Claim reflects arrearage in the amount of \$2,471.60. Class 4 claims are for claims not in default. Thus, Debtor has mis-classified creditor's claim.

### **Feasibility**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's plan depends on Debtor refinancing her home mortgage loan and paying creditor on or before 18th month of the plan. However, no details regarding this refinance or the property are provided.

Additionally, in her declaration, Debtor testifies that due to COVID-19 she was forced to close her business but that she "qualified for the forgivable PPP loan through SBA," (Dckt. 60) but again Debtor has failed to provide details regarding this loan and no motion for approval of that loan has been filed. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Trustee concurred with a continuance of the hearing to afford Debtor the opportunity to address these issues.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

### **Debtor's Declaration**

Debtor filed a Declaration to Trustee's Opposition on September 15, 2020. Dckt. 70. Debtor testifies that she is current on her mortgage payments to Class 4 creditor Specialized Loan Servicing. A copy of her mortgage monthly statement is attached as exhibit A with the note: Aug \$1,245.46 Ch #65 Mailed 8/11. Exhibit A, Dckt. 71.

Debtor notes that there is equity in her residence and will be refinancing the second mortgage from creditor HSBC so that she can afford the monthly payment. The second mortgage is due payable now and when creditor attempted to foreclose she filed bankruptcy. She is currently working with local banks to successfully refinance this second loan within a few months, and that once approved, she will seek court's approval of such refinancing.

Debtor also states that shortly after filing the instant case her business was granted a PPP loan to keep the business running through the COVID-19 pandemic. Further explaining that it is her

understanding that the PPP loan will be forgiven as long as it is used for paying ongoing payroll and other business expenses.

Lastly, Debtor testifies that the correct amount due to creditors with unsecured claims is 27%, and that she will be current under the terms of the plan before the hearing date.

**September 29, 2020 Hearing**

At the hearing, **XXXXXX**

- |    |  |                                 |  |
|----|--|---------------------------------|--|
| 7. | <a href="#"><u>20-23416</u></a> -E-13<br><a href="#"><u>DPC</u></a> -1 | JESUS GUZMAN<br>Steele Lanphier | CONTINUED OBJECTION TO<br>CONFIRMATION OF PLAN BY DAVID<br>P. CUSICK<br>8-26-20 [17] |
|----|--|---------------------------------|--|

**Local Rule 9014-1(f)(2) Objection—Hearing Required.**

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 26, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

**The Objection to Confirmation of Plan is XXXXX.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Debtor failed to appear at the First Meeting of Creditors.

## DISCUSSION

Trustee's objections are well-taken.

### **Failure to Appear at 341 Meeting**

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **Continuance of September 15, 2020 Hearing**

The Trustee reports that the First Meeting of Creditors has been continued to September 17, 2020. Debtor has no other bankruptcy filings in this District and there is nothing to indicate that Debtor and her counsel are not working to diligently prosecute this case. To save Debtor, Debtor's counsel, and the Trustee from having to appear on September 15, 2020 for the court to continue the hearing to afford Debtor the opportunity to attend the continued Meeting of Creditors, the court issues this final ruling continuing the hearing on the Objection to Confirmation in light of the only grounds for the Objection (at this point in time) being Debtor not attending the originally scheduled First Meeting of Creditors.

### **September 29, 2020 Hearing**

Trustee filed Trustee's Report at 341 Meeting on September 17, 2020. Trustee's September 17, 2020 Docket Entry Statement. Trustee reports that Debtor failed to appear at the Meeting of Creditors. The meeting was continued to October 8, 2020 at 1:00 p.m.

At the hearing, counsel for Debtor **xxxxxxx**



**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**  
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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 3, 2020. By the court's calculation, 26 days' notice was provided. The court set the hearing for September 29, 2020. Dckt. 331.

The Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----  
-----.

<b>The Order to Show Cause is <span style="color: red;">XXXXX</span>.</b>
---

Tracy Wood, Esq., counsel of record for the Debtor filed a fee application with the court. In connection with the Fee Application, Mr. Wood notified the court that the Debtor sent him a notice that he was terminating Mr. Wood's services and was filing a complaint with the State Bar. Then, Mr. Wood further notified the court that the disagreement had been resolved.

The court continued the hearing to 2:00 p.m. on August 11, 2020, and ordering the Debtor and Tracy Wood to file supplemental pleadings documenting their settlement. Order Dckt. 326. No supplemental documents were filed and no appearances were made at the August 11, 2020 hearing. Civil Minutes, Dckt. 327.

The court continued the hearing, and further ordered that Tracy Wood and David Rynda, the Debtor, both appear at the continued hearing on August 25, 2020. Order, Dckt. 328. Neither Tracy

Wood nor David Rynda appeared as ordered at the August 25, 2020 continued hearing.

The court has denied without prejudice the Application for Fees, and at this point in time, no fees may be paid to Mr. Wood.

Additionally, the failures of both Tracy Wood and David Rynda, who purported to have reached some agreement, failing to comply with the order of this court to file documentation of their settlement and appear at the August 25, 2020 continued hearing, causes the court significant concerns about their good faith in this case.

## **ORDER TO SHOW CAUSE**

Upon the failure of Debtor and Debtor's counsel failing to comply with the orders of the court, the court issued an Order to Show Cause, which specifically required as follows:

**IT IS FURTHER ORDERED** that the court shall conduct a Debtor Representation Status Conference and a hearing on the Order to Show Cause re imposition of the \$2,500.00 corrective sanction at 2:00 p.m. on September 29, 2020.

**IT IS FURTHER ORDERED** that on or before September 11, 2020, Tracy Wood, Esq., shall file and serve on the Chapter 13 Trustee and U.S. Trustee a statement under penalty of perjury:

1. Confirming either that:

A. He has not been paid any monies (from any source) for representing the Debtor in this bankruptcy case for any legal services for this bankruptcy case, relating to the bankruptcy case, or other proceedings relating to this bankruptcy case since this bankruptcy case was commenced on December 12, 2018; or

B. He has been paid monies (from any source) for representing the Debtor in this bankruptcy case for any legal services for this bankruptcy case, relating to the bankruptcy case, or other proceedings relating to this bankruptcy case since this bankruptcy case was commenced on December 12, 2018, the amounts of monies paid, the dates paid, the source of the monies paid, and the services provided for which the payments were made.

**IT IS FURTHER ORDERED** that on or before September 11, 2020, **Tracy Wood, Esq. and David Rynda**, the Debtor, and each of them shall file and serve on the Chapter 13 Trustee and the U.S. Trustee **the settlement concerning dispute reported to the court concerning the representation of Debtor** in this bankruptcy case. If no settlement is filed, then **Tracy Wood, Esq. and David Rynda**, and each of them shall file a statement of any dispute that exists

concerning the representation of David Rynda by Tracy Wood, Esq. in this bankruptcy case and related to this bankruptcy case.

**IT IS FURTHER ORDERED** that **Tracy Wood, Esq., and David Rynda**, the Debtor, **and each of them** shall appear at the September 29, 2020 Status Conference. The appearances shall be in person if the Federal Courthouse has been opened to the public and parties to appear at hearings, and shall be telephonic if the Federal Courthouse has not been reopened.

**IT IS FURTHER ORDERED**, in light of the failure of Tracy Wood, Esq. and David Rynda, and each of them failing to appear as ordered at the August 25, 2020 hearing, **the court shall impose a \$2,500.00 corrective sanction**, plus attorney's fees and costs in enforcing the payment of such corrective sanction, to be paid by **any of the persons ordered to appear who fails to appear at the September 29, 2020 Status Conference**. The court has determined that this corrective sanction, which each of the forgoing persons can avoid merely by complying with this Order of the Court and appearing at the September 29, 2020 Status Conference, is the amount reasonably necessary to correct the prior conduct of not appearing as ordered, both for this matter and other matters in federal court in the future.

### **Debtor's Counsel Case Status Brief**

On September 15, 2020, Debtor's Counsel, Tracy Wood, filed a Case Status Brief informing the court that Debtor, after making an oral agreement to pay Counsel attorney's fees in the amount of \$23,000 with \$5,000 coming from Debtor's loan to pay off the liens and settlement to Elina Machado, Debtor has now refused to sign a written agreement confirming the oral agreement denying such agreement and stating inability to make the \$5,000 at the close of escrow. Dckt. 333. After Counsel reminded Debtor that such oral agreement was made in front of the court, Debtor is now agreeable to paying Counsel \$23,000 within a year of the close of escrow. *Id.* at 2: 6-12.

Counsel states that to date, he has not been paid for his services and is in dire need of income to support his family. *Id.*: 17-18. He has requested Debtor for the executed loan agreement with terms and a monthly income and expenses report but Debtor has failed to respond and when he has responded, Debtor states being sick and "that he is working on it." *Id.*: 24-26.

Counsel has attached a copy of the settlement agreement for attorney's fees which Debtor has not signed and a copy of the executed Settlement Agreement between Debtor and Elina Machado. Exhibit A, Dckt. 334; Exhibit B, Dckt. 335. The court notes that the fee agreement filed as Exhibit A states that the fees to be paid are \$32,000 with a \$5,000 from escrow, the total amount being a different amount than that stated by Counsel on the Status Brief.

Counsel also notes that Debtor obtained an appraisal for the residence on September 2, 2020, and a loan approval letter from his lender dated September 2, 2020. *Id.* at 3: 1-5. Counsel provides a copy of the loan letter as Exhibit C. Dckt. 336. According to the lender's letter, Debtor has been approved for a \$225,000 loan. *Id.* at 2.

Counsel states that as soon as Debtor provides him with an executed loan agreement and a statement of his monthly income and expenses he will file a Motion to Borrow. Dckt. 333, at 3: 7-8. But so far has been unable to do as Debtor has failed to provide the needed documents. *Id.*: 9-12.

Counsel has informed Debtor that he was filing the instant cased status brief and Debtor informed him that he would call his lender. *Id.*: 13-14.

### **David Rynda Filings**

David Rynda has not filed any responsive pleadings to the Order to Show Cause. No settlement has been filed and no statement of the issues in dispute.

### **Motion to Borrow**

On September 18, 2020, Debtor filed a Motion to Borrow and has been set for hearing on October 20, 2020 at 2:00 p.m. Dckt. 338. The terms of the loan as stated in the Motion are summarized as follows:

- A. The loan has been pre-approved in the amount of \$225,000.
- B. The loan will be secured by the 9436 Windrunner Lane Property, which Debtor has obtained clear title to pursuant to the settlement with Elina Machado.
- C. The interest rate on the loan is 11.87% per annum.
- D. The executed loan offer is filed as Exhibit A in support of the Motion. Dckt. 339. From the Agreement, the terms include:
  - 1. Monthly Payments are interest only.
    - a. The court computes the interest only monthly payments to be (\$2,225.62).
  - 2. The lender will be paid 3 points for the loan.
    - a. The court computes 3 points for this loan to be \$6,750.
- E. The Motion states that Debtor's monthly income is \$4,200. Debtor has provided an updated statement of income filed as Exhibit B in support of the Motion to Borrow. In reviewing this exhibit, the court notes:
  - 1. Debtor states that he is an employee of Rynda's #1 Insurance and paid gross wages/commissions of \$4,200 a month. Dckt. 340 at 2.
  - 2. Rynda's #1 Insurance, the Debtor's employer makes no withholding for state or federal income taxes or Social Security. *Id.* at 3.
- F. The Motion states that Debtor has monthly expenses of (\$3,400). Debtor has

provided an updated statement of expenses filed as Exhibit C, Dckt. 341, in support of the Motion to Borrow. In reviewing this exhibit, the court notes:

1. Debtor does not provide for paying any state or federal income taxes.
2. Debtor has expenses of \$0.00 for:
  - a. Maintenance and repair expenses for the real property;
  - b. Insurance for the real property;
  - c. Property taxes for the real property;
  - d. Maintaining the property he is borrowing against;
  - e. Personal care products and services (such as hair cuts);
  - f. Medical and Dental Expenses (such as co-pays, non-prescription medication, and Band-Aids).
  - g. Medical insurance; and
  - h. Vehicle insurance.
3. Debtor lists \$250 a month for transportation expenses, but lists no vehicles as owned and pays no vehicle insurance.

Even with the questionable gross income and expense amounts, Debtor states having \$2,640.67 a month in monthly net income. This would be sufficient to fund the 11.87% monthly interest payment - but that assumes Debtor is exempt from state and federal taxes.

At the hearing on the Order to Show Cause, **XXXXXXXXXX**

9.

[18-27720-E-13](#)  
[RHS-1](#)

DAVID RYNDA  
Tracy Wood

STATUS CONFERENCE RE: ORDER  
FOR ATTORNEY'S FEES  
8-31-20 [\[331\]](#)

Debtor's Atty: Tracy L. Wood

Notes:

Set by order of the court filed 8/31/20 [Dckt 331]. David Rynda, the Debtor, and Tracy Wood, Esq. ordered to appear at the 9/20/20 2:00 p.m. status conference. On or before 9/11/20, Tracy Wood, Esq. to file and serve documents.

Case Status Brief filed 9/15/20 [Dckt 333]; Exhibits [Dckt 334; 335; 336]; Proof of Service not filed [as of 9/18/20]

<b>The Status Conference is <span style="color: red;">XXXXXXXXXX</span></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2020. By the court's calculation, 76 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Amended Plan is <span style="color: red;">XXXXX</span>.</b></p>
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The debtor, Rafael Palos De La Torre ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$3,226.00 for months six (6) through sixty (60), and a 0% dividend to unsecured claims totaling \$339,947.72. Amended Plan, Dckt. 149. Trustee will also hold a monthly dividend of \$1,427.36 until further order, and Debtor will either obtain such an order or file a modified plan by month thirty-six (36). *Id.* 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on September 10, 2020. Dckt. 157. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan payments are insufficient to pay the Class 2 claim in full.

## **DISCUSSION**

### **Insufficient Plan Payments**

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). As noted by Trustee, the proposed \$1,427.36 monthly payments for the balance of the plan term are insufficient to pay the Class 2 claims in full. Yuba Sutter has filed a secured claim (Proof of Claim 6) for \$83,059.00. Independence Bank has filed a secured claim (Proof of Claim 3) for \$123,343.42. Debtor has filed an adversary proceeding against Independence Bank to reduce their claim to \$0.00. However, Trustee asserts that \$1,558.00 is required to pay Yuba Sutter's claim of \$83,059 at 4.75% over 60 months. Thus, the Plan may not be confirmed.

Debtor identifies the competing asserted security interests of Independence Bank and Yuba Sutter in the Debtor's inventory. Additional Provisions, § 6 of Plan, Dckt 149 at 8-9. The value of this collateral is stated in the Plan to be \$76,097.71.

In addition, Yuba Sutter is stated to have a security interest against Debtor's residence and business real property.

Yuba Sutter has filed Proof of Claim No. 6-1 in the amount of \$83,059.00. The collateral listed on the Proof of Claim is real property, with copies of two deeds of trust attached. A security agreement is also attached, with the collateral described as:

2015 Carry Utility Trailer (Serial Number 4YMUE1827FN010889)  
Located at: 8162 Hallwood Blvd,  
Marysville, CA 95901

All Inventory, Chattel Paper, Accounts, Equipment, General Intangibles and  
Fixtures

In addition, the word "Collateral" also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

(A) All accessions, attachments, accessories, tools, parts, supplies, replacements of and additions to any of the collateral described herein, whether added now or later.

(B) All products and produce of any of the property described in this Collateral section.

(C) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section.

(D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from



that party's insurer, whether due to judgment, settlement or other process.

(E) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

Independence Bank has filed Proof of Claim 3-1 stating it has a secured claim of \$123,343.42, for which the collateral is "Equipment, Inventory, Accounts, Instruments." Proof of Claim 3-1, § 9. Attached to Proof of Claim No. 3-1 is a security agreement dated March 8, 2017 for that claim, in which the collateral is described as follows:

**4. COLLATERAL DESCRIPTION.**

The Collateral in which this security interest is granted is all of the Debtor's property described below, and indicated by an "X" or other mark on the applicable line, now owned or hereafter acquired, together with all replacements, accessions, proceeds, and products.

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> a. Equipment   | <input checked="" type="checkbox"/> f. Chattel paper       |
| <input checked="" type="checkbox"/> b. Fixtures    | <input checked="" type="checkbox"/> g. General intangibles |
| <input checked="" type="checkbox"/> c. Inventory   | <input checked="" type="checkbox"/> h. Documents           |
| <input checked="" type="checkbox"/> d. Accounts    | <input type="checkbox"/> i. Farm products                  |
| <input checked="" type="checkbox"/> e. Instruments | <input type="checkbox"/> j. Deposit accounts               |
|  | <input type="checkbox"/> k. Investment property            |

The borrower granting the security interest is stated to be "Los Arcos Livestock Feed Store, LLC."

On August 31, 2020, Debtor filed a Complaint naming Independence Bank as the Defendant. 20-2147; Dckt. 1.

At the hearing, **XXXXXX**

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Rafael Palos De La Torre ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

11. [20-21836-E-13](#) [SLL-2](#) **EUGENE LISOWSKI AND  
ERIN KIRCHENBERG  
Stephen Labiak** **MOTION FOR COMPENSATION  
STEPHEN LABIAK, DEBTORS  
ATTORNEY(S)  
8-31-20 [45]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 31, 2020. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion for Allowance of Professional Fees is granted.</b></p>
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Stephen L. Labiak, the Attorney ("Applicant") for Eugene Lisowski and Erin Kirchenberg, Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 10, 2020, through August 11, 2020. The order of the court approving Applicant seeking fees by serving a motion under 11 U.S.C. 329 and 330 was entered on August 6, 2020. Dckt. 44. Applicant requests fees in the amount of \$6,550.00 and costs in the amount of \$403.15.

The Application includes a task billing analysis, providing the court with a good overview of the services provided in this case.

The court notes that there are copy costs of \$51.90 in the expenses. The Application does not state what the per copy charge is this expense. In his Declaration, Applicant testifies that copies are charged at actual cost of \$0.15 per page.

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s

authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include case administration; claims administrations and objections; and drafting a motion to value secured claims. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 15.0 hours in this category. Applicant gathered information in preparation of filing; prepared petition and relevant financial documents; prepared and filed the plan; reviewed requests for special notice; and prepared for and attended 341 meeting.

Fee Application: Applicant spent 2.8 hours in this category. Applicant prepared the instant fee application.

Claims Administration and Objections: Applicant spent 0.9 hours in this category. Applicant reviewed claims filed and communicated with creditors.

Significant Motions and Other Contested Matters: Applicant spent 3.8 hours in this category. Applicant drafted and filed a Motion to Value a secured claim.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Stephen L. Labiak	19.9	\$350.00	\$6,240 <sup>FN. 1</sup>
Linda Fellner	3.1	\$100.00	\$310.00
	0	\$0.00	<u>\$0.00</u>
<b>Total Fees for Period of Application</b>			\$6,550.00

Attorney received a pre-filing attorney fee payment in the amount of \$500.00.

-----  
 FN. 1. The Application expressly requests \$6,550 in total fees, which is consistent with the detailed billing information provided as Exhibit B (Dckt. 50). In Section 7 of the Application Applicant states his fees total \$6,240, for 19.9 hours billed at \$350 an hour. That multiplication does not compute, so the court concludes that Applicant is voluntarily adjusting his fees for this period of work.  
 -----

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$403.15 pursuant to this application.

The costs requested in this Application are:

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Postage		\$10.25
Copies	\$0.15 per page	\$51.90
Filing Fees		\$341.00
<b>Total Costs Requested in Application</b>		\$403.15

Applicant testifies that all costs are billed at actual costs without markup except for copying which is based on a standard of \$0.15 per page. Declaration, Dckt. 48, at 4:23-24.

### **FEES AND COSTS & EXPENSES ALLOWED**

#### **Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$6,550.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to

be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

### **Costs & Expenses**

First Interim Costs in the amount of \$403.15 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$6,550.00
Costs and Expenses	\$403.15

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Stephen L. Labiak (“Applicant”), Attorney for Eugene Lisowski and Erin Kirchenberg, Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Stephen L. Labiak is allowed the following fees and expenses as a professional of the Chapter 13 Debtor:

Stephen L. Labiak, Professional employed by Chapter 13 Debtor

Fees in the amount of \$6,550.00  
Expenses in the amount of \$403.15,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay fees and costs allowed by this Order, after allowing credit for the \$500.00 retainer that Applicant is authorized to apply to these allowed interim fees, from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 21, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

**The Objection to Confirmation of Plan is XXXXX.**

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Plan relies on a pending Motion to Value Collateral that has been continued to September 15, 2020.

## DISCUSSION

### Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Travis Credit Union, MET-1. The hearing on this motion had been continued to September 15, 2020. Without the court valuing the claim, the Plan may not be feasible. *See* 11 U.S.C. § 1325(a)(6).

Debtor filed an Opposition acknowledging Trustee's reliance on the pending Motion to Value Collateral but asserts that the junior lien at issue was included as a debt in Debtor's previous Chapter 7 case, 12-40896. Debtor asserts that since he received a discharge in the prior case, Debtor contends that he therefore is not personally obligated on that debt on the basis that "his plan is not required to provide for a debt for which he is not personally liable." Opposition, p. 2:11-12.

No legal authority is provided for Debtor's assertion (subject to the certifications arising under Fed. R. Bankr. P. 9011) that since he obtained a discharge in the prior case, then he is not "personally liable" on the debt and he does not need to make any provision for a secured claim in his current case.

Debtor's assertion would appear to misunderstand the effect of a discharge under 11 U.S.C. § 524, which is not an exoneration of the obligation, but "merely" a federal injunction against enforcing the obligation against Debtor's exempt assets and post-petition acquired assets. 11 U.S.C. § 524(a)(2), (3). The obligation remains and may be enforced against the collateral securing the obligation. *Johnson v. Home State Bank*, 501 U.S. 78 (in which the Supreme Court does use the word "extinguish" in discussing the § 524(a) injunction). See also 11 U.S.C. § 506(a)(1) which provides:

**(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, . . . and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. . . .**

Thus, the "nonrecourse" secured debt is made into an allowed secured and an allowed unsecured claim by virtue of a debtor electing to avail him/herself of the right to value the secured claim pursuant to 11 U.S.C. § 506(a).

More significantly, Debtor's Plan actually does provide for this secured claim, listing it in Class 2, stating that the secured claim is \$0.00 and the balance is a general unsecured claim. In Class 7, Debtor provides for general unsecured claims to receive a 0.00% dividend. Turning the secured claim into an allowed general unsecured claim does not negatively impact the feasibility of the Plan.

### **Trustee's Status Report**

Trustee filed a Status Report on September 1, 2020 requesting the court taken into consideration that Debtor has withdrawn the Motion to Value the secured claim of Travis Credit Union but providing for the claim as a Class 2(C), which will receive funds pro rata if funds remain after the monthly dividends. Dckt. 53. Trustee notes that if the creditor seeks relief through a foreclosure during the bankruptcy case, Debtor may not be able to complete the plan as proposed. *Id.* at 2.

### **September 29, 2020 Hearing**

At the hearing, **XXXXX**



**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on September 10, 2020. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----  
-----.

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor will not complete plan within the allotted time.
- B. Debtor failed to provide tax returns.
- C. Debtor failed to file tax returns.
- D. Debtor failed to provide for disposable income.
- E. Debtor cannot comply with the plan.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Plan Term is More Than 60 months**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 609 months due to the greater amount of claims filed than accounted for in the plan. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

### **Failure to File Tax Returns**

Trustee asserts that the federal income tax return for the 2014, 2015, 2016, 2017, and 2019 tax year have not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **Failure to Provide Tax Returns**

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **Failure to Provide Disposable Income**

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Trustee argues that it is not clear whether the Debtor has additional disposable income to pay toward the plan since the income shown on Schedule I is inconsistent with the income listed on Form 122C-1 and no explanation has been provided as to the difference.

Thus, the court may not approve the Plan.

### **Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee asserts that Schedules, A, B, C, D, E, and H, along with the Statement of Financial

Affairs do not accurately reflect the Debtor's information at the time of filing. Trustee asserts the following:

- A. Debtor admitted at the First Meeting of Creditors that the real property located at 343 Ridge Ave, Vallejo, CA may be part of a trust.
- B. Debtor has not listed an interest in any business and Debtor admitted that she has an interest in BEA East Apartments, LLC.
- C. Trustee is unclear if the property that Debtor is claiming a \$175,000.00 exemption for belongs to the Debtor or to a trust.
- D. Debtor has failed to list the Internal Revenue Service or the Franchise Tax Board as secured creditors.
- E. Debtor listed Internal Revenue Service as \$0.00 on Schedule E and that creditor has filed a priority proof of claim in the amount of \$5,222.45.
- F. Debtor identified that she has not lived in a community property state or territory, yet her address at the time of filing was 343 Ridge Ave, Vallejo, CA.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Moreover, Trustee notes that Debtor's name in the Plan is wrong as her name is Codessa Marie Terrel and not Codessa Marie Taylor. Lastly, Debtor has not provided declarations for family support where Schedule I identifies \$1,000 from family assistance as other monthly income.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 23, 2020. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Amended Plan is ~~XXXXX~~.**

The debtor, Tiazjanae Imani Wilridge ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$330.00 commencing July 25, 2020 for 60 months, and a 0 (zero) percent dividend for unsecured claims totaling \$31,539. Amended Plan, Dckt. 31. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 6, 2020. Dckt. 37. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor failed to file supplemental Schedules to reflect changes in financial circumstances.

## **DISCUSSION**

### **Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee notes that in the declaration Debtor testifies to now being employed, yet Debtor has failed file supplemental Schedule I to update employer and income information and updating any expenses on Schedule J. Without an accurate picture of Debtor's financial reality, the court cannot

determine whether the Plan is confirmable.

On September 1, 2020, the Debtor filed a Supplemental Schedules, which Debtor's counsel argued addressed the gaps in the financial information. The Chapter 13 Trustee agreed to a continuance to allow time to review the Supplemental Schedules (Dckt. 43.).

### **Trustee's Amended Response**

On September 4, 2020 Trustee filed an Amended Response still objecting to Debtor's Plan on the basis that Debtor's Schedules show a \$335 family support payment but Debtor has failed to provide a declaration from the contributor regarding this payment, and thus Debtor has not proven she can make plan payments. Dckt. 46. However, the Debtor is now current in plan payments with the next payment due September 25, 2020 prior to the hearing.

### **September 29, 2020 Hearing**

At the hearing, **XXXXX**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on September 10, 2020. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----  
-----.

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

A. Debtor's plan fails the liquidation analysis.

## **DISCUSSION**

Trustee's objections are well-taken at the time they were made.

### **Debtor Fails Liquidation Analysis**

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee asserts that Debtor transferred bare land to Debtors' parents valued at \$21,500.00, in exchange for satisfaction of a debt.

Trustee claims that at the First Meeting of Creditors Debtor admitted that their parents had a security agreement on the property and that Debtor believed the value of the property is less than the value of the secured debt. Trustee asserts that the transfer of Debtor's interest in the property may be an avoidable transfer under 11 U.S.C. § 548.

Trustee filed a Status Report on September 22, 2020 informing the court that Debtor have resolved the liquidation issue raised by the Trustee by adding the following language in the Order Confirming the Plan:

Any Modified Plan filed in this case will provide at a minimum of \$20,885.00 (Liquidation) to be paid first to Priority Unsecured Claims (Class 5) and then the balance to allowed General Unsecured Claims (Class 7).

Dckt 21.

The court is unclear how including language that states that if the Debtor seeks to modify the plan in the future, then a future modified plan - though it is not required in the sought to be confirmed plan - provide for \$20,885 to be paid to priority unsecured claims, addresses the defect of the current proposed plan not providing for such monies to fund this plan.

At the hearing, **XXXXXXXXXX**

~~As the language accounts for Trustee's Concern, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Objection is overruled, and Paul Jorge Fraga and Jasa Ruth Ann Fraga ("Debtor") Chapter 13 Plan filed on July 20, 2020, and as amended with the following language:~~

~~Any Modified Plan filed in this case will provide at a minimum \$20,885.00 (Liquidation) to be paid first to Priority Unsecured Claims (Class 5) and then the balance to allowed General Unsecured Claims (Class 7).~~

~~is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 30, 2020. By the court’s calculation, 58 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Modified Plan is ~~XXXXX~~.**

The debtor, Leanne Lynn Boger (“Debtor”) seeks confirmation of the Modified Plan to address actual claims filed and to cure default caused by a reduction in income and underestimated expenses. Declaration, Dckt. 48. The Modified Plan provides for monthly plan payments of \$670.00 for months 9 through 60, and a 0 (zero) percent dividend to unsecured claims totaling 38,952.60. Modified Plan, Dckt. 50. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 7, 2020. Dckt. 58. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. The Plan is not feasible.
- C. Debtor failed to explain two large payments made to Trustee in July.



## **DISCUSSION**

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$3,169.30 delinquent in plan payments, where the plan as proposed calls for \$17,670.00 to have been paid but Debtor has paid a total of \$14,500.70 to date. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The plan may not be feasible. According to the Trustee's calculation the plan will take 72 months to complete. The Trustee shows approximately \$41,943.08 remains to be paid through the plan. Thus 63 months remain ( $\$41,943.08 / \$670.00 = 63$ ).

Moreover, §7.02 of the proposed plan states the Trustee is to pay the Post-Petition Monthly Payment through month 8 (June 2020) of the plan. The debtor will pay the payment directly beginning August 1, 2020. Thus, it appears that no payment will have been made for the month of July, which is contrary to the mortgage agreement which states that Debtor was to begin modification payments beginning April 1, 2020. *See* Dckt. 36, at 16.

### **Larger Payments**

Debtor paid Trustee received two payments of \$1,566.90 each in the month of July. Trustee is uncertain how Debtor was able to afford such payments when Debtor's supplemental Schedules J filed on June 30, 2020 as Exhibit A, indicates Debtor has a monthly net income of \$670.00. *See* Dckt. 49, at 5. Debtor fails to explain the source of the funds whether these savings, actual income, or Debtor liquidated an asset.

At the hearing, the Trustee reported that there was still a plan delinquency addressed. The Trustee concurred in a continuance.

### **Debtor's Supplemental Pleading**

Debtor filed a Supplement to the Motion on September 22, 2020. Dckt. 63. Debtor also filed a Declaration in support of the Supplement. Dckt. 64.

Regarding Trustee's raised objections, Debtor first requests that the issue regarding delinquency be addressed at the hearing and further asserts that according to her calculations, the total paid out according to the plan is \$51,484.53 leaving a balance of \$555.47 to cover interest on the class 2 vehicle claim. Debtor would not oppose to a minor modification of the plan payments to account for any plan shortage.

Debtor informs the court that she made direct mortgage payments to creditor Carrington Mortgage Services for November 2019, August 2020, and September 2020. Provided that Trustee has made eight payments to creditor as called for the plan, there should not be any skipped payments. Debtor would consent to the following additional language to cover any remaining shortage:

“Section 7.02 is modified in that the Debtor will pay direct payments to Carrington Mortgage Services in the amount of \$1870.48 beginning July 1, 2020.”

Debtor explains that the additional payment made was a cashier’s check that was un-deposited and eventually returned that appears to not have been taken out of her account by the TFS system due to technical problem, savings that she had accumulated, and a one-time bonus issued by her employer due to a Payroll Protection loan received by her employer. Dckt. 64, ¶¶ 5-9.

Lastly, Debtor states that the Supplemental Schedules I and J filed as exhibits to the motion are an accurate reflection of Debtor’s current monthly income and expenses. *Id.*, ¶ 10. Debtor testifies that she is about to start a new job and once she builds her commissions, she anticipates an increase in income. *Id.*, ¶ 11.

Debtor provides the following language in her prayer for relief for the Order modifying her Chapter 13 Plan:

Plan payments under the First Modified Chapter 13 Plan would be as follows: \$17,200.00 total paid in for Months 1 through 8, and \$670.00 per month for months 9 through 60 of the plan. The percentage paid to unsecured creditors would remain the same so that all allowed unsecured claims would be paid no less than zero (0) cents on the dollar, based upon the actual claims and anticipated claims filed.

### **September 29, 2020 Hearing**

At the hearing, **xxxxxx**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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The debtors, John Michael McKinley and Karyn Anne McKinley ("Debtor") seek confirmation of the Modified Plan to pay for priority claims filed by the Internal Revenue Service and the Franchise Tax Board. Declaration, Dckt. 63. The Modified Plan provides for:

1. monthly payments of \$1,665.00 from August 25, 2020 until month thirty-nine (39),
2. followed by payments of \$1,717.00 for months 40 through 60,
3. and a 0 percent dividend to unsecured claims totaling \$150,000.00.

Modified Plan, Dckt. 65. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on September 8,

2020. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Debtor improperly filed Schedules I and J.

## **DISCUSSION**

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$114.00 delinquent in plan payments, which represents less than one month of the \$1,551.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor filed a Response on September 13, 2020. Dckt. 73. Debtor argues they made a payment of \$114.00 via TFS on September 12, 2020 and attached a copy of the payment confirmation to the Response. The court notes that the attachment states that a payment has been “scheduled.”

At the hearing, **xxxxxxx**

### **Filing of Schedules I and J**

The Chapter 13 Trustee asserts that Debtors’ Schedule I and J were filed as an Exhibit only. Dckt 64. Debtor filed Supplemental Schedules I and J on September 13, 2020, and therefore Trustee’s concerns are addressed.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, John Michael McKinley and Karyn Anne McKinley (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on August 19, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2020. By the court’s calculation, 43 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Modified Plan is ~~XXXXX~~.**

The debtor, Eufemio Ordonia Seguban and Liza Frani Seguban (“Debtor”) seek confirmation of the Modified Plan to begin remitting payments after defaulting in payments due to financial hardship related to COVID-19, an increase in rent, and emergency dental procedures. Declaration, Dckt. 90. The Modified Plan provides for monthly plan payments of \$865.00 commencing on August 25, 2020 for 65 months, and a 0 (zero) percent dividend to unsecured claims totaling \$17,842.58. Modified Plan, Dckt. 89. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 6, 2020. Dckt. 96. Trustee opposes confirmation of the Plan on the basis that:

- A. Supplemental Schedules I and J reflect unsupported monthly contributions and unexplained expenses.
- B. Debtor was delinquent in plan payments prior to COVID-19.

## DISCUSSION

### Unexplained Reduction in Expenses

Debtor's Amended Schedule I reflects an increase in average monthly income of \$500.00, from monthly contributions from their two adult children. Trustee notes that no declarations from the children have been filed to provide more information about these contributions such ability to make the contribution and for how long.

The Amended Schedule J reflects unreasonable decreases and increases in expenses, such as:

- ◆ a decrease from \$865.00 to \$300.00 for food;
- ◆ an increase from \$189.00 to \$302.99 for telephone, cell, internet, cable;
- ◆ a decrease from \$110.00 to \$25.00 for clothes;
- ◆ a decrease from \$125.00 to \$25.00 for personal care;
- ◆ a decrease from \$40.00 to \$0.00 for charitable contributions;
- ◆ an increase of \$0.00 to \$100.21 for life insurance; and
- ◆ an increase from \$0.00 to \$282.00 for vehicle insurance.

Absent explanation from Debtor as to how the proposed increase in income and drastic decrease in expenses will be achieved, the court does not believe that Debtor's projection is in good faith. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

### Delinquency

The Chapter 13 Trustee asserts that Debtor is \$5,915.00 delinquent in plan payments to date. Debtor seeks to extend the plan term due to COVID-19 related hardship and other events; however, Trustee notes that Debtor fails to explain their delinquency prior to the COVID-19 pandemic. Trustee's records show that Debtor made no plan payments in November 2019 and February 2020, prior to the stay at home orders.

Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6). At the hearing, the Trustee reported that the August 2020 payment is due the day of the hearing, but not yet received.

Debtor filed a Reply requesting a continuance of the hearing in order to meet with counsel and provide Trustee a supplemental declaration addressing Trustee's concerns regarding delinquency, changes to expenses, and Debtor's children contribution to Debtor's Plan. Dckt. 100.

**Declarations Filed on  
September 15, 2020**

On September 15, 2020, Debtor filed separately the Declarations of Eufemio O. Seguban and Liza F. Seguban (“Debtor”), Arvin Seguban, and Samantha Seguban. Dckts. 104, 105, and 106.

Debtor’s Declaration addresses Trustee’s concerns regarding expenses and explains the reasons behind the various changes in expenses. Moreover, Debtor explains that the delinquency was partly based on Debtor Eufemio’s reduction in income due to COVID-19 and increased expenses related to Debtor Liza’s employment as an administrator at an assisted living home for elderly.

Looking at the Declaration concerning the expenses, the explanations appear to require some explanations themselves. These include:

- A. Decrease of food and housekeeping supplies from \$865.00 to just \$300.00 for two adults. While the “kids” are not eating at home much (the prior budget should not have been subsidizing adult children), it is now only \$300 for the two adult debtors. Allowing \$50 a month for housekeeping supplies, that leaves \$250 a month, which is \$125.00 per person per month for the seven years of this COVID extended plan term.
  - 1. \$125.00 a month for food is just \$1.38 of food per meal for each meal in a thirty-day month.
- B. Clothing of \$12.50 a month per person for seven years does not appear reasonable, rational, or credible.

In reality, this appears to be a “stop-gap plan,” just to get Debtor to the post-COVID-19 shutdown and then a real modified plan will be filed (and the Trustee will diligently watch for the increases in Debtor’s income).

Debtor’s children Arvin and Samantha testify, under penalty of perjury, that they are both willing to help their parents make plan payments by contributing \$250.00 each to ensure that the Plan payments are timely made and that their contributions are gifts and do not expect to be repaid.

At the hearing, **xxxxxxx**

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2020. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Modified Plan is XXXXX.**

The debtor, Mark Alan Kelley ("Debtor") seeks confirmation of the Modified Plan to cure default in plan payments caused by fluctuations in his income due to COVID-19 and address actual claims filed. Declaration, Dckt. 45. The Modified Plan provides for monthly plan payments of \$7,600.00 for 75 months, and a 100 percent dividend to unsecured claims totaling \$11,220.09. Modified Plan, Dckt. 47. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 6, 2020. Dckt. 51. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. The plan is not feasible.
- C. Trustee is unable to fully comply with Section 3.07(b) of the plan.
- D. Debtor fails to explain delinquency prior to the COVID-19 pandemic.
- E. Schedules I and J were filed as exhibits only.



## **DISCUSSION**

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$2,800.00 delinquent in plan payments, which represents a fraction of the \$7,170.00 proposed plan payment.

Moreover, the Chapter 13 Trustee asserts that Debtor is \$62,539.40 delinquent in plan payments to date. Debtor seeks to extend the plan term due to COVID-19 related financial hardship; however, Trustee notes that Debtor fails to explain their delinquency prior to the COVID-19 pandemic. Trustee's records show that Debtor made no plan payments in October through December 2019 and January through July 2020.

Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Failure to Complete Plan Within Allotted Time**

The Plan will complete in more than the proposed 84 months. According to the Chapter 13 Trustee, the Plan will complete in 88 months due to Debtor's proposed payments will total \$562,400.00, where \$522,511.30 is required to pay creditors and Trustee fees are approximately \$56,240.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

### **Post-Petition Arrearage**

Trustee asserts that due to Debtor's failure to make plan payments, Trustee has been unable to make class 1 creditor PHH Mortgage Services installment payments for months October and December 2019, and January through July 2020. Trustee's accounting shows that the amount due for the unpaid installments is \$19,548.27 for the property located on Zermatt Dr. And \$19,735.47 for the North Lakeshore Blvd. property. Thus, Trustee is unable to fully comply with Section 3.07 of the Plan.

### **Schedules I and J**

Debtor filed supplemental Schedules I and J as exhibits in support of the motion. Trustee argues that as they were not filed in the court's docket as amended or supplemental, this will make it difficult for parties to find Debtor's most recent budget on file.

At the hearing, the Trustee reported that they have discussed with Debtor's counsel. While the Debtor is delinquent, he has made substantial payments to reduce.

### **September 29, 2020 Hearing**

At the hearing, **xxxxxx**

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is ~~XXXXX~~.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Mark Alan Kelley ("Debtor"), is \$48,597.52 delinquent with a monthly plan payment of \$6,970.94.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on June 17, 2020. Dckt. 41. Debtor states a modified plan will be filed prior to the hearing date.

## **DISCUSSION**

Debtor is delinquent in plan payments. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee agreed to continue the hearing on this Motion to the date and time scheduled for the hearing on the Debtor's motion to confirm a modified plan.

## **MOTION TO CONFIRM PLAN**

The Motion to Confirm was denied as Debtor is delinquent, and thus, the Plan was not confirmed.

## **AUGUST 25, 2020 HEARING**

At the hearing the Parties agreed to a continuance to afford the Debtor additional time to prosecute the confirmation of a modified plan.

At the hearing, **xxxxxx**

21. [18-20067](#)-E-13      **ROBERT GODFREY**      **CONTINUED MOTION TO MODIFY**  
[WW-2](#)      **Mark Wolff**      **PLAN**  
6-26-20 [\[69\]](#)

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2020. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Confirm the Modified Plan is <b>xxxxxx</b>.</b>
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The debtor, Robert E. Godfrey (“Debtor”) seeks confirmation of the Modified Plan to extend the plan to 72 months so as to catch up with plan payments after increased and unanticipated expenses and loss of income due to the COVID-19 crisis. Declaration, Dckt. 73. The Modified Plan provides for:

1. monthly plan payments of \$550.00 for eight (8) months commencing on June 2020,d
2. followed by monthly plan payments of \$650.00 for eleven (11) months,
3. then monthly plan payments of \$850.00 for one (1) months,
4. followed by monthly plan payments of \$950.00 for 24 months, and
5. a 0.0 percent dividend to unsecured claims totaling \$151,502.00.

Modified Plan, Dckt. 71. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 28, 2020. Dckt. 77. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is not delinquent in plan payments.
- B. Debtor's Schedules show an increase in income, not a decrease.

## **DISCUSSION**

Debtor is required to file a plan in good faith. Trustee notes that although Debtor seeks to modify the plan on the basis that he was delinquent in plan payments, no such delinquency existed until June 2020 when it appears Debtor made a plan payment in the amount of \$550.00 (as required by the proposed plan), instead of the \$988.00 payment required under the confirmed plan.

Further, as Trustee notes, a review of Debtor's Schedules I and J show that Debtor's combined monthly income increased from \$8,678.15 to \$8,999.60, with increased expenses from \$8,078.00 to \$8,448.24.

Trustee also points out that Supplemental Schedule I states that the retirement loans for Debtor's wife end June 12, 2020 and December 14, 2021, yet the loan repayment amount increased from \$760.44 to \$770.00. Moreover, Trustee requested information pertaining to Debtor's debt management payments of \$346.00 per month with an estimated payoff of December 2020. Yet, Debtor only increases the plan payments by \$100.00 in February 2021 where the debt management payment should no longer be an issue.

Thus, the Plan may not be confirmed unless Debtor clarifies these inconsistencies.

Debtor filed a Declaration on August 5, 2020 addressing Trustee's objections. Dckt. 80. Debtor explains that the supplemental schedules filed before the motion to modify do not account for the reduction of pay of approximately 9.23% after employer mandated that each employee take two personal leave days off without pay as a result of COVID-19. *Id.*, ¶ 3.

Expenses such as higher utilities, additional food, supplies and protective gear have also increased due to COVID-19. *Id.*, ¶ 4. Debtor also switched internet providers to get a faster internet with more bandwidth. *Id.*

At the hearing, the Trustee and Debtor agreed to continue the hearing and allow for the filing of supplemental pleadings.

## **Trustee's Supplemental Response**

Trustee filed a Response on September 11, 2020 noting that Debtor has not filed additional supplemental schedules accounting for decrease in income and Trustee is unsure Debtor will be able to make plan payments. Dckt. 85.

Due to COVID-19, Debtor's employment mandated furlough days resulting in a 9.23% reduction in income, yet Debtor's expenses had increased last time Debtor provided Supplemental Schedules.

Moreover, Trustee questions the reduction in the overall step payments under the proposed modified plan and fails to explain why he offers to increase step payments by \$400.00 over the life of the plan, when his disposable income stands to increase by \$1,116 once his wife's retirement loans are be paid off by December June 12, 2020 and December 14, 2021; and debt management payments of \$346.00 per month will conclude by December 2020. Lastly, Trustee notes that Debtor fails to explain why the retirement loan repayment on Debtor's Supplemental Schedule I increased by \$9.56 from \$760.44 to \$770.00 when one of the loans should have ended by June 12, 2020.

### **September 29, 2020 Hearing**

In looking at the amended/supplemental Schedules I and J exhibits (Dckt. 72), the court notes several points. Debtor lists having a dependant who is a 37 year old step-daughter. No contribution is made for household expenses from the step-daughter - whether earnings, Social Security, disability benefits, or other support program. Debtor states that the step-daughter pays her own living expenses, but not rent, because in part she pays \$1,600 a month on her \$300,000 student loan. Though getting a free living space, it does not appear that the step-daughter is a dependent or someone Debtor and his non-debtor spouse need to have his creditors subsidize.

Debtor lists having \$332 a month in vehicle insurance. That is \$4,000 annually for car insurance for the Debtor and his non-debtor spouse. Debtor lists three vehicles on Schedule A/B for Debtor and his spouses. Dckt. 1 at 12.

On the exhibit Schedule J there is a \$346.00 a month paying for "Wife's debt payments." The court is unsure why the post-petition earnings of Debtor and his spouse can be diverted to prefer this creditor for "Wife's debt."

In his declaration, Debtor discusses some large capital improvements to his residence. While they are needed repairs, they will greatly enhance the value of the property for Debtor in the future.

At the hearing, **xxxxxx**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Robert Edward Ackerman ("Debtor") has provided evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on September 3, 2020. Dckt. 57. Trustee does not oppose confirmation but notes that the Plan provides for Flagship Credit Acceptance, with a monthly contract installment of \$0.00 but that Chrysler Capital filed a Proof of Claim on February 18, 2020, asserting \$35,779.34 was owed and \$587.37 was delinquent. Trustee adds that the delinquency appears to be one payment due on the seventh of the month, and no charge is due if paid within ten (10) days.

At the hearing, Debtor clarified **xxxxxx**

~~The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Robert Edward Ackerman (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on August 14, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 12, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

**The Objection to Confirmation of Plan is sustained and the Chapter 13 Plan is not confirmed.**

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Trustee has not completed his review of Debtor's financials on the basis that Debtor has not yet filed 2018 tax returns.
- B. Debtor has failed to amend her Schedules to reflect actual income and current expenses.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's current Schedule I states that she is unemployed but lists projected income of \$5,000, with a projected \$1,000 in rental expenses and a \$600 "rent in Michigan for job" expenses in line 21 of Schedule J. Dckt. 1. The Debtor has failed to amend Schedules I and J to reflect her actual income after testifying at the First Meeting of Creditors that she is a traveling nurse and obtained a job in Louisiana where her rent is \$1,500, which is \$500 higher than the projected rent on Schedule I. Without



an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Failure to File Tax Returns**

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2018 tax year has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Trustee provided Debtor with additional time to file the 2018 tax returns and the meeting of creditors has been continued to September 17, 2020 at which time Debtor must have filed the returns and provide Trustee with copies.

Trustee requests the court continue the confirmation hearing to September 29, 2020, after the continued meeting of creditors to give the Trustee time to assess the feasibility of the plan.

### **Trustee's 341 Meeting Report**

Trustee reports that Debtor failed to appear at the September 17, 2020 Meeting of Creditors. Trustee's September 17, 2020 Docket Entry Statement. The continued Meeting of Creditors will be held on October 15, 2020. *Id.*

### **Notice of Intent to Close Case**

A Notice of Intent to Close Chapter 13 Case without Entry of Discharge due to Failure to File Financial Management Course Certificate was entered on September 21, 2020. Dckt. 20.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Amended Plan is <u>granted</u>.</b></p>
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The debtors, Michael Eugene Boyd and Sandra Danyelle Palen Boyd ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$2,755.00 for seven (7) months, followed by monthly plan payments of \$3,039.00 for fifty-three (53) months, and a 38% dividend to unsecured claims totaling \$96,318.88. Amended Plan, Dckt. 74. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on September 15, 2020. Dckt. 76. Trustee opposes confirmation of the Plan on the basis that:

- A. The Amended Plan was filed and served late.
- B. The Amended Plan violates 11 U.S.C. § 1325(b).

Moreover, Trustee is not opposed to the continuance of the hearing.

## DISCUSSION

### Insufficient Filing and Service of Amended Plan

Federal Rule of Bankruptcy Procedure 3015(h) requires “A request...shall be filed with the proposed modification.” FED. R. BANKR. P. 3015(h). Local Rules provide that “the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it.” LOCAL BANKR. R. 3015-1(d)(1). The Amended Plan was not filed until September 11, 2020, and was served September 10, 2020. The Amended Plan was not served nor filed with the motion. That failure violates Federal Rule of Bankruptcy Procedure 3015(h) and Local Bankruptcy Rule 3015-1(d)(1).

### Not Best Effort

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor’s projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Trustee requests supplemental Schedules I and J to be filed on the anniversary of confirmation pursuant to 11 U.S.C. § 521(f)(4); and Debtor provide for increased plan payments when each 401(k) loan is paid off during the plan, and so Debtor must provide the loan terms. Additionally, Trustee would like clarification as to whether Debtor has taken more loans since filing.

Debtor filed a Reply on September 22, 2020 consenting to continue the confirmation hearing to allow any other creditors an opportunity to review the plan but note that only Trustee has raised objections to the two previously proposed plans and any creditor participating is unlikely.

Debtor also consents to Trustee’s proposed changes, namely, consent to adding language to the order confirming that they will supply supplemental Schedules I and J as requested by the Trustee and also consent to increasing their plan payments as their 401(k) loans are paid off, with estimated increases as of August 30, 2021, June 12, 2023, and May 13, 2024.

Thus, Debtor argues with Debtor consenting to the changes, Trustee’s concerns are addressed and the plan may be confirmed.

~~The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Michael Eugene Boyd and Sandra Danyelle Palen Boyd (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on September 11, 2020, as amended with the following language:~~

~~(1) Debtor shall provide supplemental Schedules I and J to be filed on the anniversary of confirmation pursuant to 11 U.S.C. § 521(f)(4).~~

~~(2) Debtor shall provide for increased plan payments when each 401(k) loan is paid off during the plan; with estimated increases as of August 30, 2021, June 12, 2013, and May 13, 2024.~~

~~is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

**Tentative Ruling:** The Motion to Approve Transfer of Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Approve Transfer of Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Approve Transfer of Property is <span style="color: red;">XXXXX</span>.</b>
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Chapter 13 Debtor Sen Xaysana, ("Debtor") is requesting, pursuant to Local Bankruptcy Rule 3015-1(h)(1)(E), to transfer the real property commonly known as 6401 Fieldale Drive, Elk Grove, California ("Property") into her non-filing spouse's name, Phanmany Xaysana, via grant deed, in order to refinance the current mortgage.

Debtor argues that as she is currently going through a Chapter 13 bankruptcy, a refinance solely on her non-filing spouse's name will result in a more advantageous interest rate and payment. Debtor believes this will provide for a more financially beneficial loan.

Debtor's Chapter 13 Plan provides that the property shall revert in Debtor upon confirmation.

## DISCUSSION

Local Rule 3015-1 for Chapter 13 Debt Adjustment Cases provides in part that a Debtor may only sell, transfer property or incur with court approval; specifically:

E) *Other New Debt and Transfers*. If the trustee will not give the consent required by Subparagraphs (A), (B), (C), or (D) of this Paragraph (1) or if the debtor wishes to incur new debt or transfer property on terms and conditions not authorized by those Subparagraphs, the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1.

The Motion is supported by the Declaration of Sen Xaysana. Dckt. 46. The Declaration affirms Debtor's desire to obtain the post-petition financing but that her credit rating has been an impediment. Debtor testifies that the terms of the refinance would greatly improve if done under Debtor's non-filing spouse's name. Thus, in order to take advantage of this benefit, Debtor would like to transfer the property to her husband's name only.

Debtor is currently in a sixty (60) month plan, with monthly plan payments of \$412.00. Looking at Amended Schedule I, Debtor's gross monthly income is \$2,253.33. Dckt. 35 at 2. Debtor states under penalty of perjury that her husband has no income (stating that it is "N/A").

It is curious, because while not disclosing her non-filing spouse's income, Debtor states that the non-filing spouse pays for various expenses, including car payments. Schedule J, *Id.* at 5.

The non-filing spouse not having any (disclosed) income, the court is left wondering how such a non-filing spouse could obtain a loan.

The court is also left wondering why Debtor has been excused from complying with the requirements of Schedule I which requires that income for the non-filing spouse must be disclosed.

At the hearing, **XXXXXXXXXX**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Transfer of Property filed by Sen Xaysana ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Sen Xaysana to transfer the real property commonly known 6401 Fieldale Drive, Elk Grove, California ("Property") into her non-filing spouse's name, Phanmany Xaysana, via grant deed.

**IT IS FURTHER ORDERED** that **xxxxxxx**

## FINAL RULINGS

26. [20-23209-E-13](#)      ANDREW/DIANE GARCIA      CONTINUED OBJECTION TO  
[DPC-1](#)      Harry Roth      CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
8-13-20 [\[31\]](#)

**Final Ruling:** No appearance at the September 29, 2020 hearing is required.

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**The Objection to Confirmation is dismissed without prejudice.**

The Chapter 13 Trustee, David Cusick (the “Trustee”), an *Ex Parte* Motion to Dismiss the pending Objection on September 24, 2020, Dckt. 53; no prejudice to the responding party appearing by the dismissal of the Objection; the Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the debtor, Andrew and Diane Garcia (“Debtor”); **the *Ex Parte* Motion is granted, the Trustee’s Objection is dismissed without prejudice, the court removes this Objection from the calendar, and the Chapter 13 Plan filed on June 27, 2020, is confirmed.**

Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation filed by the Chapter 13 Trustee having been presented to the court, the Chapter 13 Trustee having filed an *Ex Parte* Motion to Dismiss this Objection (Dckt. 53) and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation is dismissed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.



**Final Ruling: No appearance at the September 29, 2020 Hearing is required.**

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Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 17, 2020. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Deborah Joyce Watson ("Debtor") has provided evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition but notes that the plan does not incorporate language related to a Stipulation between Debtor and creditor Towd Point Mortgage Trust 2018-6, U.S. Bank National Association, as Indenture Trustee (Dckt. 96). Dckt. 118.

The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Deborah Joyce Watson (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on August 17, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28. [19-21821-E-13](#)      **DARRELL/CHUENTE RHYM**      **MOTION TO INCUR DEBT**  
[GEL-6](#)                      **Gabriel Liberman**                      **8-26-20 [91]**

**Final Ruling:** No appearance at the September 29, 2020 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2020. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Incur Debt is granted.</b></p>
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Darrell Kevin Rhym and Chuenta Lenise Rhym (“Debtor”) seeks permission to refinance real property commonly known as 7641 Prescott Way, Sacramento, California, with a total amount financed at \$289,628.00 and monthly payments of \$1,825.41 to Carrington Mortgage Services over 30 years with a 3.125% fixed interest rate.

Trustee does not oppose the motion and believes the transaction to be in Debtor's best interest. Dckt. 96.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Darrell Kevin Rhym and Chuenta Lenise Rhym ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Darrell Kevin Rhym and Chuenta Lenise Rhym is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 94.

**Final Ruling:** No appearance at the September 29, 2020 hearing is required.  
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<p><b>The Objection is dismissed without prejudice.</b></p>
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David Cusick (“the Chapter 13 Trustee”) having filed an *Ex Parte* Motion to Dismiss the pending Objection on September 21, 2020, Dckt. 33; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by William Brooks Schroyer (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 33, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is dismissed without prejudice.

**Final Ruling:** No appearance at the September 29, 2020 hearing is required.  
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The Chapter 13 Trustee, David Cusick (the “Trustee”), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on June 25, 2020, is confirmed.**

Counsel for the debtor, Sonda L. Charlton (“Debtor”) shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

**Final Ruling: No appearance at the September 29, 2020 Hearing is required.**

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Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2020. By the court’s calculation, 47 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Plan is granted.</b></p>
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The debtors, Jason Peter Rupchock and Tiffanie Ann Rupchock (“Debtor”) seek confirmation of the Chapter 13 Plan. The Plan provides payments of \$1,250.00 per month for the remainder of the plan beginning on June 25, 2020 with a 0 percent dividend to unsecured claims totaling \$42,943.62. Plan, Dckt. 115. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 17, 2020. Dckt. 119. Trustee opposes confirmation of the Plan on the basis that:

- A. Trustee is unsure Debtor can afford the monthly plan payments.

#### **DISCUSSION**

##### **Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor’s Plan does not provide for payments on a 2017 Toyota Camry in the amount of

\$412.66 per month. Debtor's Declaration states their monthly average net income is \$7,795.88 with expenses of \$6,500.00 per month for a total disposable net income of \$1,295.88. Debtor's Decl., Dckt. 114. When the vehicle payment is factored in, Debtor's disposable income is \$1,665.86.

Additionally, Trustee points out that there is an unexplained reduction in income. Debtor's Declaration indicates a monthly net income of \$7,795.88. Dckt. 114. However, Debtor's income as listed in Schedule I states an amount of \$8,578.52. Dckt. 1. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Trustee concurred with Debtor's request for a continuance and affording the Debtor the opportunity to file supplemental pleadings to address these issues.

### **Debtor's Supplemental Declaration**

Debtor testifies that their income has changed due to Debtor Jason's change in employment and an increase in expenses are due to a new car payment, higher electric bills, and an increase in medical costs. Dckt. 124. Debtor adds that he will be able to afford the plan with an average monthly net income of \$8,575.21, minus expenses of \$7,279.33, which produces a net disposable income of \$1,295.88 and a proposed monthly Chapter 13 plan payment of \$1,250.00. *Id.*

Debtor filed Supplemental Schedules I and J on September 9, 2020. Dckt. 125.

### **Trustee's Status Report**

Trustee states that Debtor has addressed Trustee's concerns by filing a Supplemental Declaration and Supplemental Schedules I and J on September 9, 2020. Dckt. 127.

The Chapter 13 Plan complies with 11 U.S.C. § 1322 and 1325, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Amended Chapter 13 Plan filed on May 28, 2020 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.